

**STATE PROTOCOL AGREEMENT BETWEEN
THE COLORADO STATE DIRECTOR [SD] OF THE BUREAU OF LAND
MANAGEMENT [BLM] AND THE COLORADO STATE HISTORIC PRESERVATION
OFFICER [SHPO] REGARDING THE MANNER IN WHICH THE BLM WILL MEET ITS
RESPONSIBILITIES UNDER THE NATIONAL HISTORIC PRESERVATION ACT
[NHPA] AND THE 2012 NATIONAL PROGRAMMATIC AGREEMENT [National PA]
AMONG THE BLM, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
[ACHP], AND THE NATIONAL CONFERENCE OF STATE HISTORIC
PRESERVATION OFFICERS [NCSHPO]**

I. INTRODUCTION

- A. This State Protocol Agreement [Protocol] supplements the National PA, and describes how SHPO and BLM will interact. This Protocol emphasizes a collaborative and cooperative relationship, while striving to improve the management of cultural resources on BLM lands in Colorado and those that might be affected by BLM's actions. It also ensures a program for continued and enhanced communication between BLM, SHPO, Indian tribes, and other consulting parties potentially affected by BLM undertakings.
- B. This Protocol replaces the 1998 Protocol, which is hereby terminated except as stipulated in Section II (A), and provides for alternative procedures for implementing Section 106, as well as setting forth requirements pursuant to Section 110 of the NHPA.
- C. This Protocol does not change the consultation requirements with Indian tribes and the public required in the National PA.
- D. Terms used in this Protocol are defined in Attachment A. All other terms not specifically defined in Attachment A remain as defined in 36 CFR 800.16.
- E. This Protocol streamlines Section 106 requirements for consultation with SHPO for undertakings, and contains stipulations regarding proactive Section 110 management programs, maintenance of field office cultural resource project logs, field office reviews and certification, annual reviews, annual reports, and cultural resource staff qualifications.
- F. BLM is legally responsible for carrying out undertakings consistent with the NHPA and the National Environmental Policy Act [NEPA].
- G. BLM National Landscape Conservation System [NLCS] units are organized under field offices with assigned cultural resource specialists, and are included when field offices are referenced below.

II. RELATIONSHIP OF THIS PROTOCOL WITH OTHER AGREEMENTS

A. Addendum I to the 1998 Protocol, entitled “Section 106 Requirements for Comprehensive Travel and Transportation Management”, along with the 1998 Protocol, is appended as Attachment F to this Protocol. Attachment F will apply to all land use planning efforts initiated and involved in the consultation process at the time this Protocol is executed. The content of Addendum 1 will be updated within two years, and the new content will be added to Attachment E. Attachment F will be removed with the mutual agreement of the parties without formal amendment to this Protocol.

B. When additional statewide agreement documents are needed to define procedures that are not covered by the National PA or this Protocol, BLM and SHPO may develop, in consultation with Indian tribes and other interested parties, other statewide PAs, Memoranda of Agreement [MOA] and Instruction Memoranda [IM], and will append the supplemental agreements to Attachment E of this Protocol.

III. WHEN BLM WILL USE 36 CFR PART 800

A. In certain circumstances, the alternative procedures detailed in this Protocol may be suspended. The regulations at 36 CFR 800.3 through 800.7, 36 CFR 800.8(c), 36 CFR 800.14, or the subparts detailed in each item below, will be followed in lieu of this Protocol for the following:

1. Emergency undertakings, pursuant to 36 CFR 800.12;
2. When ACHP formally participates in adverse effects resolutions, pursuant to 36 CFR 800.6(b)(2) or 800.14(b);
3. All multi-state projects;
4. When an undertaking will adversely affect a National Historic Landmark (NHL);
5. If a field office is decertified;
6. When BLM develops program alternatives, including project-specific PAs, pursuant to 36 CFR 800.14;
7. If BLM or SHPO terminates this Protocol;
8. If the National PA is terminated or suspended;
9. If SHPO and BLM fail to reach agreement on National Register of Historic Places [NRHP] eligibility, effect, or effect resolutions, pursuant to 36 CFR 800.4(c)(1)-(2), or 36 CFR 800.4(d)(1)(ii)-(iii), or 36 CFR 800.5(c)(2)(i)-(iii), or 36 CFR 800.6.

B. In the case of complex or controversial undertakings, BLM and SHPO may consult to determine whether the regulations would serve as the appropriate compliance mechanism.

IV. ADMINISTRATIVE INTERACTION AND REPORT PROCEDURES

A. Administrative Reports

1. BLM's "Cultural Resource Management Program Annual Report," which is submitted to the Washington Office for the Secretary of the Interior's "Report to Congress on Federal Archaeological Activities", will serve as BLM's Annual Report to SHPO [Annual Report].

2. The Annual Report covers a twelve month period, from August 1 through July 31.

3. BLM will submit the Annual Report to SHPO in September and will simultaneously post it on the BLM Colorado website. BLM will notify ACHP and SHPO, by email, of the online availability of the report. This report, without locational and funding information, will also be available to the public and to Indian tribes.

4. SHPO may prepare a response that assesses the effectiveness of BLM's implementation of this Protocol and may make recommendations for actions to be taken by BLM. SHPO will submit the response to BLM within 30 days of receiving the Annual Report. BLM will consider SHPO's assessments and recommendations for future actions and will respond, as appropriate, within 30 days. If SHPO is not satisfied with BLM's response, the parties will follow dispute resolution procedures detailed in Section XVI (A).

5. By August 1, each BLM field office will provide the BLM Deputy Preservation Officer for Colorado [DPO] with an updated and complete cultural resources project log, as described in the following section, enclosing the project log with the Annual Report.

B. Field Office Cultural Resource Project Log [CR Log]

1. Each BLM field office will maintain a CR log for the period from August 1 through July 31, every year.

2. In the CR log, the field office will list both undertakings that require formal SHPO correspondence (concurrence and informational letters) and undertakings that do not require formal SHPO correspondence (such as literature and record searches for proposed undertakings and exemptions).

3. In the CR log, BLM will also list Section 110 activities that resulted in units of accomplishment tracked in the BLM Performance Management Data System.

4. At a minimum, BLM will include the following in the CR log:

- Name of undertaking or Section 110 activity
- Type of undertaking or Section 110 activity
- NEPA number (if assigned)
- BLM cultural resource number
- SHPO number (if assigned)
- Final SHPO correspondence date (if appropriate)

5. Information requirements in the field office CR log may be amended following mutual agreement between the DPO and SHPO, and the amended requirements will be appended to this Protocol.

6. BLM will clearly indicate undertakings with documentation backlogs in the CR log.

7. If questions or concerns about an undertaking arise, the DPO or SHPO may review a field office CR log at any time.

8. The field office will provide an updated and complete CR log to the DPO and SHPO prior to a field office review.

9. If SHPO desires more information about an undertaking, it may access online BLM NEPA documents. A log of pending undertakings for each field office [NEPA log] is available online at http://www.blm.gov/co/st/en/BLM_Information/nepa.html at present, however, this web address might change in the future. If necessary, SHPO will contact an individual field office to determine the most current online location of its NEPA log.

10. BLM will pursue the development of an electronic method for disseminating CR log information.

C. Meetings

1. SHPO and BLM will meet regularly to facilitate good communications. Such meetings may be conducted face-to-face, by video-conferencing, or by use of other long-distance meeting technology.

2. SHPO staff, the DPO, and BLM cultural resource staff from each district will meet annually to review the implementation of this Protocol and to discuss pertinent issues.

3. SHPO staff and the DPO will meet quarterly to discuss current Section 106 compliance issues and to exchange information relevant to the goals and objectives set forth in this Protocol.

4. The parties may arrange other meetings to address emerging issues and their effects on cultural resources.

V. SHPO INVOLVEMENT IN BLM LAND USE PLANNING

A. BLM will notify SHPO of opportunities to participate at the development stage and all subsequent phases of land use planning in accordance with 43 CFR 1610.3 (“Coordination with Other Federal Agencies, State and Local Governments, and Indian Tribes”).

1. During public scoping, BLM will initiate a conference call with SHPO to introduce a land use plan, identify interested public, discuss cultural resource issues and concerns, and to determine a review schedule.

2. BLM will provide SHPO with the most current land use plan (e.g., resource management plan) and amendments, along with cultural resource management plans for each field office. SHPO may access the associated NEPA documents online through the NEPA log of a field office, if available.

B. BLM cultural resource goals and objectives in land use plans will consider and incorporate the objectives and strategies identified in the current Office of Archaeology and Historic Preservation [OAHP] state preservation plan, when relevant.

VI. COOPERATIVE PROGRAM DEVELOPMENT ACTIVITIES

A. Shared Database and Information Management

1. In order to enhance understanding of Colorado’s past, provide a resource for education, and permanently preserve information that otherwise will be lost, SHPO and BLM will continue to exchange information and work cooperatively regarding the location, evaluation, and management of cultural resources in Colorado. Such information includes, but is not limited to: geospatial data, reports, site and isolated find forms, and maps.

2. SHPO and BLM will work expeditiously and cooperatively to resolve data errors found in formal documentation and in the SHPO database.

3. Although digital data are the preferred format for exchange, BLM and SHPO will ensure that hard copy information, in reasonable amounts, will be available. A data sharing cooperative agreement administered by the BLM Colorado State Office will govern the exchange of information, and the parties will review and update the agreement every three years or when needed.

4. BLM will maintain and annually update a Digital Specifications Guide [Guide] that details the specifics of the information exchange. Before the release of the Guide each year, BLM will request input from the field office staff and a review of the document by SHPO’s information management staff. An electronic copy of the Guide will be available on the BLM and SHPO websites.

5. SHPO will continue to manage an automated database with geospatial capabilities, and will populate the database with information supplied, in part, by BLM. As the primary repository for such information in Colorado, SHPO will migrate the archived digital data as new technologies are developed. BLM will assist SHPO in maintaining and improving the information system by providing financial, personnel, hardware, and software resources, as funding is available.

6. BLM will serve as a partner in the development of the statewide system that will be used to synthesize cultural resources information. As available and feasible, BLM will supply the resources enumerated in Section VI(A)(5).

7. BLM and SHPO will review and analyze the information exchange system and best practices for cultural resources information management annually, prior to release of the Guide.

8. BLM and SHPO will implement the following data security measures:

a. Both parties will ensure that all sensitive information is protected from unauthorized use;

b. Both parties will investigate the circumstances of any geospatial or sensitive data breach and will cooperatively develop remedies that can be implemented by each agency. BLM and SHPO will together determine the best course of action to retrieve and secure the information.

B. Section 110 Program Management Activities

1. Each BLM field office will develop, implement, and maintain a Section 110 management program that incorporates one or more of the following activities:

a. Heritage resources education and outreach, such as on-site and off-site interpretation, education programs, brochures, posters, exhibits, electronic applications, web pages, presentations, and site tours;

b. Proactive inventory of public lands for planning and research, to determine the presence and importance of cultural resources;

c. Intensive documentation, evaluation and study of cultural resources and historic structures, such as nominations to the NRHP, condition assessments, oral history studies, cultural landscape studies, regional overviews, historic contexts, and artifact or specimen analysis;

d. Stabilization, management, restoration, and protection of cultural resources and historic structures, such as brick and mortar stabilization and installation of fences, gates and anti-vandalism signs;

e. Monitoring of cultural resources and historic structures to assess resource condition and to detect and deter looting and vandalism.

2. BLM and SHPO will cooperatively participate in Archaeology and Historic Preservation Month and other historic preservation activities sponsored by History Colorado.

3. BLM will utilize cooperative stewardship and cost-share projects and programs with partners, where feasible, including field schools, site steward programs and other volunteer programs.

4. Each BLM field office will list Section 110 activities and accomplishments in the CR log.

5. If BLM produces formal documentation for a Section 110 activity, it will submit the documentation to SHPO with an informational letter.

C. Emerging Issues

1. BLM or SHPO may identify issues or subject areas that require policy changes or procedures not detailed in this Protocol. The parties will consult and determine whether the issues or subject areas require further analysis by a working group.

2. At a minimum, the working group will include the DPO, field office cultural representatives and SHPO representatives. The DPO will invite field office cultural resource representatives that are interested in participating, along with those that possess skills or knowledge which would benefit the process. The field managers will approve the participation of their staff.

3. The working group will produce recommendations to be reviewed by BLM, SHPO and other consulting parties that possess an interest in the outcome, and will take the resulting comments into account when finalizing new policies and procedures.

4. BLM will formalize as addenda to this protocol any new policies and/or procedures developed by the working group, and approved by BLM in consultation with SHPO. BLM will place addenda in Attachment E and will number them consecutively.

VII. NATIVE AMERICAN PARTICIPATION

A. BLM will consult with Indian tribes on individual undertakings as part of ongoing government-to-government relationships, sustained by regular consultation, on a programmatic basis. BLM field managers will make the final determination on the Indian tribes to be consulted for an undertaking. BLM will seek to develop Protocol agreements with Indian tribes. In consulting with Indian tribes or authorized tribal representatives, BLM will follow 36 CFR 800.2(c)(2) and will use the following guidance:

- BLM Manual 8120, Tribal Consultation under Cultural Resource Authorities
- BLM Handbook H-8120-1, Guidelines for Conducting Tribal Consultation
- Executive Order No. 13007, Indian Sacred Sites
- Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
- National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties
- 2011 DOI Tribal Consultation Policy and Companion Secretarial Order 3317
- Tribal Protocols/Memoranda of Understanding for consultation, as developed

B. Consultation with Tribes

1. Tribal consultation applies to identification, evaluation, and effects resolution activities conducted under this Protocol.
2. BLM will seek and consider the views of an Indian tribe that attaches religious and cultural significance to cultural resources within the area of potential effect [APE] of an undertaking.
3. Field managers will ensure that consultation with Indian tribes takes place at the earliest stages of planning.
4. As needed, field managers will continue consultation throughout the planning and implementation stages of an undertaking.
5. A NEPA log listing pending undertakings for each field office is available online for the use of interested Indian tribes [see Section IV (B) (9)].

C. Native American Human Remains

1. If Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered as a result of a BLM undertaking, BLM will comply with Section 3 of the Native American Graves Protection and Repatriation Act [NAGPRA] and its implementing regulations at 43 CFR Part 10, Subpart B.
2. BLM will follow the provisions of applicable Colorado state law regarding Unmarked Human Graves (CRS 24-80-1302) for human remains discovered on state or private lands in Colorado.

VIII. OTHER CONSULTING PARTIES

A. Other consulting parties include local governments, grantees, permittees, and owners of affected lands or land surfaces. Consulting parties may also include local historical societies, historic preservation advocacy groups, or certain individuals and organizations with a demonstrated interest in the undertaking (36 CFR 800.2 (c) (5)).

B. BLM will invite consulting parties to participate in the Section 106 consultation process [Section VIII (C)] if they have a demonstrated interest in a BLM undertaking and its effects on historic properties.

1. BLM will consider the nature of the undertaking when determining appropriate consulting parties.

2. BLM will consult SHPO Publication 1568, which lists local governments with historic preservation ordinances or resolutions, and upon request, SHPO will share information with BLM regarding possible consulting parties for an undertaking.

3. BLM field managers will make final determinations regarding consulting party participation for each undertaking.

C. Consultation Activities

1. BLM will confer with consulting parties regarding identification, evaluation, and effects resolution activities conducted under this Protocol.

2. Field managers will ensure that consultation takes place at the earliest stages of planning.

3. As needed, field managers will continue consultation throughout the planning and implementation stages of an undertaking.

D. BLM may elect to coordinate its Section 106 consulting party obligation with its NEPA public participation requirement, recognizing that the Section 106 consultation requirement differs somewhat from the NEPA public involvement procedures. Possible methods for this coordination include, but are not limited to:

1. Inserting language into the NEPA scoping notification (including Notices of Intent) indicating that the notification partially fulfills Section 106 consultation requirements;

2. Ensuring that public contacts and scoping meetings include information about Section 106 consultation;

3. Referencing a related Section 106 MOA or PA in an appendix of the draft and final NEPA document (while protecting sensitive cultural resource information).

E. In the NEPA document sections on affected environment, impacts, and mitigation, BLM will include only non-proprietary information obtained during the Section 106 process.

IX. PUBLIC PARTICIPATION

- A. BLM will seek and consider the views of the public for purposes of Section 106 when carrying out the actions under the terms of this Protocol, pursuant to 36 CFR 800.2(d)(3).
- B. BLM will solicit input through the public participation opportunities afforded by BLM's land use planning and environmental review processes established under NEPA and the Federal Land Policy and Management Act (FLPMA), and in accordance with regulations for Coordination of Planning Efforts at 43 CFR 1610.3.
- C. BLM will follow internal guidance regarding the coordination of NEPA and NHPA requirements, including Washington Office IM 2012-108, until that IM is superseded by policy or until an updated reissuance of IM 2012-108 is available.
- D. In order to allow an opportunity for the public to comment on BLM undertakings subject to Section 106 review, each field office currently maintains a log of pending undertakings (the NEPA log). At present the NEPA log is available online at http://www.blm.gov/co/st/en/BLM_Information/nepa.html. The public and interested parties may contact the individual field office for further information.
- E. When the public has a stake in the effect of a BLM undertaking on historic properties, BLM will notify and invite them to consult in the review process pursuant to NHPA.
- F. This Protocol governs compliance with the NHPA, specifically the relationship of BLM and SHPO, and does not replace BLM's other responsibilities to the public under other authorities.

X. IDENTIFICATION, EVALUATION, AND RESOLUTION OF EFFECTS

- A. BLM will carry out all activities in this section in consultation with Indian tribes and consulting parties, as appropriate.
- B. Routine Undertakings: Routine undertakings do not require formal consultation with SHPO. The following situations are considered routine, and BLM does not need to wait for SHPO concurrence with its determinations of NRHP eligibility and effect:
 - 1. When an undertaking qualifies as an exemption (see Attachment B);
 - 2. When no cultural resources are identified in the APE;
 - 3. When cultural resources are present in the APE, but only when the determinations of effect are either "No historic properties affected" or "No adverse effect".

C. Non-Routine Undertakings: Non-routine undertakings require formal consultation with SHPO and may require ACHP notification, depending on the classification below. Such undertakings may not proceed until BLM completes Section 106 consultation with SHPO, Indian tribes and other consulting parties. Lists of non-routine undertakings, organized by their required consultation levels, follow.

1. *The following undertakings and situations meet the threshold for formal SHPO consultation:*

- a. Land exchanges, land sales, and land transfers to non-federal entities;
- b. Recreation and Public Purpose Act leases;
- c. Geophysical operations involving surface disturbance;
- d. Undertakings adversely affecting historic properties;
- e. Undertakings involving NHLs;
- f. Undertakings involving landowner denial of access to the APE;
- g. NRHP eligibility determinations regarding traditional cultural properties;
- h. When BLM's cultural resource specialists wish to bring a particular project to the attention of SHPO.

2. *The following undertakings and situations meet the threshold for ACHP notification:*

- a. Non-routine interstate and/or interagency projects or programs;
- b. Undertakings adversely affecting NHLs;
- c. Undertakings that BLM determines to be highly controversial (e.g., undertakings that receive unusual public attention and/or involve conflict);
- d. Undertakings that will have an adverse effect on historic properties and cannot be resolved through formal agreement between BLM and SHPO (such as an MOA or PA);
- e. The development and approval of program alternatives, including project-specific PAs.

3. General Provisions Regarding ACHP Involvement

a. BLM will invite ACHP to participate in consultation following the guidelines at 36 CFR 800.11(e) when undertakings meet the thresholds listed in Section X (C) (2), and will follow the processes at 36 CFR 800.6(b)(2) or 800.14(b) to resolve adverse effects when ACHP formally participates in the resolution of adverse effects for an undertaking.

b. ACHP may enter into consultation at any time, pursuant to Section 5 (d) of the National PA.

c. At any point in the Section 106 process, BLM, SHPO, or other consulting parties may request the ACHP's guidance or participation, but ACHP will determine whether it elects to participate.

D. Exemptions. Undertakings that have little or no potential to affect historic properties, for which no identification is necessary, are identified in Attachment B. Exemptions are defined as routine undertakings, and may proceed without further consultation with SHPO. BLM will submit no formal documentation to SHPO, but will note the use of the exemption in the CR log.

1. BLM cultural resource specialists will review proposed undertakings to determine whether a specific project or activity qualifies as an exemption, as described in Attachment B and in BLM Manual 8110.23 ("Survey Requirements and Exceptions"). Only BLM professional staff, as described in Section XIV(A)(2)(c), are authorized to determine whether the undertaking is an exempted project or activity.

2. In consultation with Indian tribes and other consulting parties, BLM and SHPO may agree that other classes of exempted undertakings may be revised within Attachment B without formally amending this Protocol.

E. Area of Potential Effects

1. BLM cultural resource specialists will determine the APE of an undertaking, as defined by 36 CFR 800.16(d), taking into account information provided by Indian tribes, consulting parties and interested parties, as appropriate.

2. BLM will fully document the APE in the inventory report.

3. BLM may request the assistance of SHPO when defining the APE of an undertaking. If the definition of the APE has the potential to cause controversy, BLM may choose to consult with SHPO in writing. In such circumstances, BLM will provide SHPO with documentation, such as maps and literature review information, along with a formal written request to consult. SHPO will respond to BLM in writing within ten working days.

F. Identification of Historic Properties

1. During the earliest feasible planning stage of an undertaking, BLM will seek out information needed to identify historic properties within the APE including:

- Consultation with Indian tribes and consulting parties, as appropriate;
- The BLM Colorado Handbook of Guidelines and Procedures for Inventory, Evaluation, and Mitigation of Cultural Resources [Handbook]; and
- Relevant ACHP guidance, entitled “Meeting the Reasonable and Good Faith Identification Standard in Section 106 Review (2011)”.

2. BLM cultural resource specialists will determine which portion of the APE is subject to inventory, and will identify sites and isolated finds that are within the APE of a BLM undertaking.

3. If there is potential to affect buried cultural properties in the APE, BLM may consult with SHPO to determine the level of effort and methodology necessary to identify and define the limits of these cultural properties.

4. BLM will ensure that the identification of cultural resources is conducted in accordance with professional standards detailed in the Secretary of the Interior’s Standards for Archeology and Historic Preservation (48 FR 44716) (Federal Register, September 29, 1983) [Secretary’s Standards], the Handbook, and the OAHCP Cultural Resource Survey Manual (Publication No. 1527).

5. In each field office CR log, BLM will list undertakings where previous inventory was done, or where the nature of the undertaking presents an extremely low risk of adversely affecting historic properties and therefore requires no field inventory. The BLM may proceed with such undertakings without further SHPO consultation.

G. Evaluation

1. Determination of NRHP Eligibility

a. During all inventories, BLM will ensure that cultural resources are evaluated in a manner consistent with the Secretary’s Standards, Colorado historic context information, BLM’s 8100 manuals, all appropriate bulletins issued by the NRHP, and the Handbook.

b. BLM will make determinations of NRHP eligibility according to criteria listed in 36 CFR Part 60.4, without a requirement to consult SHPO.

c. BLM may request assistance from SHPO if questions about NRHP eligibility arise.

d. BLM's NRHP eligibility determinations regarding traditional cultural properties will require formal SHPO consultation, as well as consultation with tribes or communities with historically rooted beliefs, customs, and practices tied to a particular place.

e. If SHPO disagrees with BLM's determination of NRHP eligibility, the parties will follow disagreement procedures detailed in Section XII (C).

2. Assessment of Effects

a. General Provisions

i. When making determinations of effect, BLM will consider potential direct, indirect, and cumulative effects to historic properties in consultation with Indian tribes and consulting parties, as appropriate.

ii. When considering potential indirect effects on historic properties, BLM will consider visual, audible, and atmospheric elements that could diminish the integrity of properties for which setting, feeling, and/or association are aspects of such integrity.

iii. Documentation for public inspection will be available prior to approval of the undertaking through the online NEPA logs currently found at http://www.blm.gov/co/st/en/BLM_Information/nepa.html.

b. *No Historic Properties Affected:* If no historic properties are present in the APE, or if they are present but will not be affected by activities associated with the undertaking, BLM will make a determination of "No Historic Properties Affected". The project is considered a routine undertaking, and BLM will submit formal documentation with an informational letter (Attachment C) to SHPO and may proceed without further SHPO consultation.

c. *No Adverse Effect:* If a proposed undertaking will affect a historic property, but the effects will not diminish the aspects of integrity or the characteristics that make the property eligible for the NRHP, BLM will make a determination of "No Adverse Effect", as defined in 36 CFR 800.5(b). The project is considered a routine undertaking and BLM will submit formal documentation with an informational letter to SHPO and may proceed without further SHPO consultation.

d. *Adverse Effect:* If a proposed undertaking alters, whether directly or indirectly, any of the aspects of integrity or characteristics of a historic property that qualify it for inclusion in the NRHP, BLM will make a determination of "Adverse Effect". The project is considered a non-routine undertaking, and BLM will submit formal documentation to SHPO, along with a concurrence letter (Attachment D) requesting SHPO concurrence with BLM's determinations.

e. If SHPO disagrees with BLM's determination of "No Historic Properties Affected", "No Adverse Effect", or "Adverse Effect" as described, the parties will follow disagreement procedures detailed in Section XII (C).

H. Resolution of Adverse Effects

1. General Provisions

a. It is BLM policy to avoid adversely affecting historic properties if at all possible. BLM will propose mitigation if avoidance is not feasible.

b. When ACHP formally participates in the resolution of adverse effects for an undertaking, BLM will follow the process in 36 CFR 800.6(b)(2) or 800.14(b).

c. When developing an agreement or mitigation plan, BLM will take into account the Secretary's Standards and ACHP guidance on archaeology at <http://www.achp.gov/archguide> and other relevant guidance on the ACHP website.

d. BLM and SHPO are encouraged to discuss treatment options informally before finalizing a mitigation plan.

e. BLM will not allow an undertaking to proceed until mitigation has been completed, unless SHPO agrees that the undertaking may proceed.

f. If BLM and SHPO do not concur on a proposed resolution of effects, the parties will follow disagreement procedures detailed in Section XII (C).

g. BLM will develop a formal agreement document, such as an MOA or PA, to resolve adverse effects when requested by SHPO, an Indian tribe, or consulting party.

2. Resolutions Not Requiring an Agreement Document: The following categories are standard mitigation options that do not require the development of an MOA or PA. If alternative mitigation is preferred, the parties will follow procedures in Section X (H) (3).

a. *Data Recovery*: If the adversely affected historic property is expected to yield significant information from subsurface deposits, BLM may prepare a data recovery plan.

i. Data recovery plans will be consistent with the Secretary of Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37).

ii. Objection to or failure to comply with the approved data recovery plan by the applicant will require BLM to consult with SHPO and to negotiate an MOA or PA.

iii. BLM will submit the data recovery plan to SHPO for review and comment. If SHPO has no comment, and no Indian tribe or consulting party objects, BLM may assume SHPO concurrence with the plan. BLM may proceed with the undertaking without an MOA or PA.

b. *Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS) and Historic Resource Documentation Standards for Level I, II and III Documentation* (as described in OAHN Publication 1595): For a historic property where an adverse effect can be mitigated by completing HABS/HAER/HALS documentation or Level II or III documentation, BLM will ensure the preparation of a documentation plan. In order to ensure that the appropriate level of documentation is completed, BLM will coordinate all HABS/HAER/HALS documentation projects with the National Park Service Inter-Mountain Regional Office in Denver, Colorado, prior to initiating the project.

c. *Stabilization*: BLM will ensure the preparation of a condition assessment for each affected historic property, detailing a plan for conservation and treatment. Detailed specifications for stabilization work will include individual fieldwork tasks required, specific locations requiring stabilization, methods and materials used, and types of expertise required.

d. *Synthesis and Historic Context*: BLM will prepare a mitigation document detailing its plans for production of synthetic and/or historic context documents for the purpose of mitigation, and will submit the mitigation document to SHPO for review and comment. If SHPO has no comment, and no Indian tribe or other consulting party objects, BLM may assume concurrence with the plan.

i. Synthesis and historic context documents will include, at a minimum: a summary of existing information (compiled from such information sources as databases, gray literature, publications, and primary sources); the culture and/or topical history of a geographic area or historic/prehistoric landscape; and the identification of research questions and data gaps resulting from the synthesis of the information.

ii. Alternatively, synthesis documents may focus on a specific subject (such as a particular technology).

iii. Synthesis and historic context documents need not be presented in a monograph format (they may be electronic, for example).

e. *Intensive documentation:* BLM may perform intensive surface recording as mitigation for adverse effects. Such recording is appropriate on sites where subsurface deposits are unlikely to yield significant information, but where a high density of surface artifacts is present. BLM will submit the documentation plan to SHPO for review and comment. If SHPO has no comment, and no Indian tribe or other consulting party objects, BLM may assume concurrence with the documentation plan.

3. Resolutions Requiring an Agreement Document

a. If there are historic properties within an APE that will be adversely affected and may not be treated using any of the mitigation types in Section X (H) (2), BLM will begin the process of developing an MOA or PA. Mitigation types that require an agreement may include creative solutions for treatment such as substitute inventories; interpretive and digital products, events and programs; sampling or excavation of comparable historic properties; and land acquisition.

b. Upon receipt of SHPO concurrence with its adverse effect determination, BLM will initiate consultation to develop an agreement with SHPO, and as appropriate, ACHP [if the undertaking meets any of the thresholds in Section X (C) (2)], as well as Indian tribes or consulting parties, as appropriate.

c. Following consultation with the parties to the agreement, BLM will prepare an MOA or PA. BLM is responsible for preparing the agreement document, unless the parties agree to an alternate preparer. The parties will refer to Section III of this Protocol to determine whether an agreement document should be written following the regulations at 36 CFR Part 800.

d. Once an MOA or PA has been executed, BLM will send a copy to the participating signatories, consulting parties, and ACHP, as applicable.

XI. DISCOVERIES

A. If a discovery is likely during the course of an undertaking, BLM will develop, in consultation with SHPO, a discovery plan and/or specific conditions of approval for the treatment of such properties prior to initiating or authorizing the undertaking.

1. When BLM makes an inadvertent discovery of human remains, the discovery plan will comply with other laws, such as NAGPRA and applicable state statutes.

2. BLM will follow the process for unanticipated discoveries described in the Handbook for undertakings where no discovery plan was developed.

B. BLM and SHPO will jointly develop standard discovery procedures and standard conditions of approval for use with undertakings that lack specific discovery plans or conditions of approval.

XII. REPORTING AND SHPO REVIEW PARAMETERS

A. Reporting

1. Quality Assurance

a. For all undertakings, BLM will provide appropriate formal documentation to SHPO. BLM will follow the Colorado survey manual, the Guide, and the Secretary's Standards for all documentation produced in-house.

b. BLM will review the work of permitted contractors and will ensure that Colorado survey manuals, the Guide, and the Secretary's Standards are followed in all documentation prepared by contractors.

c. Only GS-9 or higher grade cultural resource specialist will make determinations of NRHP eligibility and effect. BLM will make final determinations considering the recommendations of permitted contractors, and the individuals making the recommendations will be identified in reports sent to SHPO.

2. Timing of Documentation Submission

a. Routine Undertaking: BLM should submit formal documentation to SHPO prior to implementation of an undertaking, but no later than six months following completion of the fieldwork. Prompt transmission of this documentation will assure an updated database and will help to prevent future report backlogs.

b. Non-Routine Undertaking:

i. BLM will submit formal documentation to SHPO in a timely manner, pursuant to the processes described in Section X.

ii. When an agreement is required, BLM must complete the Section 106 process with an executed MOA or PA prior to making a final decision on a proposed action.

iii. BLM will complete treatment before an undertaking is implemented, unless BLM and SHPO agree that treatment may occur coincident with or following implementation of an undertaking.

c. If BLM produces formal documentation for an activity conducted under Section 110, it should submit the documentation to SHPO, no later than six months following completion of the fieldwork.

d. When a field office does not send formal documentation to SHPO within the six month deadline, BLM will notify SHPO in writing, and will include in the correspondence a plan for completion, including the expected date of submission.

e. Based on recommendations from the DPO and SHPO, the SD may place a BLM field office on provisional certification status if the field office does not make mutually acceptable progress toward submittal of formal documentation, resulting in a cumulative report backlog.

B. Review Processes

1. BLM and SHPO will comment in writing within ten (10) working days of receipt of correspondence and associated documentation, unless the parties agree to an extension.

2. Routine Undertaking: BLM will submit all formal documentation with an informational letter to SHPO (Attachment C). As necessary, SHPO may comment in writing on BLM's findings. BLM will respond to any SHPO comments in writing. Both parties will discuss the comments and responses during the quarterly meeting and will use this information to assess the effectiveness of this Protocol at the annual meeting.

3. Non-routine Undertaking: BLM will submit all formal documentation with a concurrence letter to SHPO (Attachment D).

a. SHPO will respond in writing to BLM's findings.

b. If SHPO concurs with BLM on all findings, and all other consultation has been completed, the undertaking may proceed.

c. If SHPO disagrees with BLM, the parties will follow procedures for resolving disagreements of NRHP eligibility, effect, and treatment detailed in Section XII (C).

C. Resolving Disagreements about NRHP Eligibility, Effects on Historic Properties or Proposed Effects Resolutions

1. If, after its first review, SHPO disagrees with a BLM field office on determinations of NRHP eligibility, effects on historic properties, or proposed treatment, the two parties will attempt to resolve the issue.

2. If the BLM field office and SHPO cannot agree on a course of action and a timeframe, the DPO, in coordination with the BLM field office, will attempt to resolve the issue with SHPO.

3. If SHPO and BLM fail to reach agreement on NRHP eligibility, effect and effect resolutions, BLM will follow the process at 36 CFR 800.4 through 800.7.

4. BLM and SHPO will ensure that changes to NRHP eligibility are communicated to both parties, and are incorporated into formal documentation and digital databases. Following mutual agreement between BLM and SHPO, minor editorial changes may be made manually, whereas extensive edits might require that a new final draft is produced.

XIII. FIELD OFFICE REVIEWS

A. The DPO and SHPO staff will conduct reviews of one to two field offices annually, and will conduct reviews of sufficient detail to evaluate whether BLM has adhered to the following requirements:

1. Qualified BLM cultural resource specialists are available [pursuant to Section XIV (A)];

2. Undertakings are receiving cultural resource consideration;

3. Formal documentation is completed and is being sent to the SHPO in a timely manner (not to exceed six months, unless there is an alternative agreement with SHPO in place);

4. Cultural resource specialists are applying professional standards;

5. Cultural resource identification and evaluation, assessment of effects and resolution of effects has occurred before undertakings proceed;

6. Final reports of treatment are being completed and sent to the SHPO; and

7. Follow-up monitoring, where required by avoidance stipulations, MOA or treatment plan specifications, is being completed.

B. Within 30 days of the review (unless the parties agree to an extension) and in coordination with the DPO, SHPO will prepare a letter summarizing the results of the evaluation, including recommendations for improvements, and will send the letter to the SD.

C. The SD will transmit the letter from SHPO to the relevant BLM field office with specific direction on recommendations for improvement, if warranted.

D. The DPO and SHPO staff will provide ongoing Protocol refresher training for appropriate BLM staff during the field office review.

XIV. STAFFING

A. Professional Staff

1. When hiring new, full-time cultural resource specialists, BLM will follow Section 112(a)(1)(B) of NHPA, taking into account the Secretary's Standards for Professional Qualifications, and the education and experience standards set forth in BLM Manual 8150 (12)(B)(2), while giving equal value to on-the-job experience.

2. Staffing levels are based on the BLM standard position descriptions for the GS-193 series.

a. Cultural resource specialists at the GS-5 and GS-7 levels are defined as entry-level staff.

b. Formal documentation prepared by GS-5 and GS-7 staff will be reviewed and approved by a GS-9 or a higher-grade cultural resource specialist before a BLM field office submits it to SHPO.

c. Only a GS-9 or a higher-grade cultural resource specialist may:

i. Recommend determinations of NRHP eligibility and effect, along with effects resolution, if necessary, to the field manager;

ii. Conduct all other Section 106 consultation activities on behalf of the field manager.

iii. Determine whether an undertaking may be exempt from identification and evaluation of cultural resources.

3. The DPO, in cooperation with SHPO, will review the qualifications of cultural resource specialists to determine whether any on-the-job training, mentoring, or additional experience is necessary before the specialist is certified to make determinations of NRHP eligibility and effect, to recommend effects resolutions, and to conduct other activities under this Protocol.

4. If a GS-9 or a higher-grade cultural resource specialist is not part of the staff of a BLM field office, BLM will ensure that the field office has access to a cultural resource specialist who has been certified to operate under this Protocol, along with an approved plan that outlines how the work will be accomplished. Such a plan will be approved only for the period during which the field office is seeking to fill the position. The plan will be reviewed, approved and closely monitored by the DPO.

5. If a GS-9 or a higher-grade cultural resource specialist is not part of the staff of a BLM field office, and there is no plan to hire one, the field office will be decertified, and will operate under the implementing regulations at 36 CFR Part 800.

B. Professional Capability

1. BLM will ensure that expertise in prehistoric archaeology, historic archaeology, industrial archaeology, history, architectural history, landscape architecture, and historic architecture is available to all BLM cultural resource specialists.

2. If BLM determines that it does not employ a cultural resource specialist with a particular skill, it will obtain that expertise for the purposes of determining NRHP eligibility, effects, and effects resolution for the cultural resources in question. BLM may request the assistance of SHPO staff in such cases, or may obtain the necessary expertise through contracts, BLM cultural resource specialists from other offices, or cooperative arrangements with other agencies.

3. Seeking help from another BLM office, from SHPO, or from other experts, does not place that field office's certification at risk.

4. BLM will provide its cultural resource staff with opportunities for continued professional development through classes, mentoring, and participation in professional organizations, such as the Colorado Council of Professional Archaeologists, the Society for American Archaeology, and other historic preservation organizations.

XV. CERTIFICATION

A. A BLM field office will be certified to operate under this Protocol when it has completed each of the following requirements:

1. District managers, field managers, supervisors of the cultural resource program, and cultural resource specialists have completed required Protocol and National PA orientation and training; and

2. Professional capability to carry out the policies and procedures detailed in this Protocol is available through each field office's immediate staff or through other acceptable means; and

3. A GS-9 or a higher-grade cultural resource specialist is available and has been assigned duties.

B. Protocol Orientation and Training

1. Protocol Orientation

a. District managers, field managers and supervisors of cultural resource program staff will complete online orientation within 90 days after execution of this Protocol. Orientation will include information on the requirements of the National PA and of this Protocol.

b. When BLM hires new district managers, field managers and new supervisors of the cultural resource program staff, the DPO will ensure that the newly-hired staff receives online orientation within 90 days of starting work. Acting district managers, field managers and supervisors of the cultural resource program staff that will be in place for more than 90 days must complete online orientation.

2. Cultural Resource Specialist Training

a. The DPO will ensure that current cultural resource specialists receive eight-hour Protocol training within 90 days after execution of this Protocol. Field office certification will be at risk if this training is not completed.

b. Training resources might include, but are not limited to: the National PA, this Protocol, the BLM 8100 Manual Series, the Handbook, other policy documents, and Colorado historic context information.

3. BLM will provide Protocol training during field office reviews and will develop and maintain online resources.

4. Once a field office has successfully completed orientation and training, the DPO will notify SHPO that the field office is certified to operate under this Protocol.

5. SHPO will assist BLM in developing Protocol certification training.

6. The DPO and SHPO will review training needs annually to ensure field office certification is maintained.

C. Provisional Certification

1. The DPO or SHPO may recommend that the SD place a field office on a provisional status based on findings from any of the reviews specified in Section XIII, and if mutually acceptable progress toward submission of formal documentation is not met, resulting in a cumulative report backlog.

2. Provisional status does not eliminate the requirement that a field office utilizes a GS-9 or a higher-grade cultural resource specialist to make determinations of NRHP eligibility and effect, to recommend effects resolutions, and to conduct other activities under this Protocol.

3. Provisional status may extend from one to two years, and will be determined during the field office review and/or review of a report backlog. The term of the provisional status will be based on agreement between the parties to this Protocol, and will reflect the complexity of the deficiencies identified.

4. While on provisional status, a field office will have the opportunity to correct deficiencies that have been identified and documented during review of field office practices under this Protocol.

5. Upon expiration of the provisional status term, the parties to this Protocol will convene to determine whether the field office has satisfactorily corrected identified deficiencies.

6. Should the parties determine that a field office does not employ a cultural resource GS-9 or a higher-grade cultural resource specialist, or identified deficiencies remain uncorrected, or if new deficiencies that are considered significant by the parties arise, the decertification process will be initiated as described in Section XV (D).

D. Field Office Decertification

1. If a BLM district or field manager, the DPO, or SHPO believes that a pattern of failure to comply with the terms of this Protocol exists, the party may request the SD to review the status of a field office and its capability for carrying out the terms of the National PA and of this Protocol. The following list includes most, but not all, field office actions that might trigger a review:

- a. Failure to maintain a field office cultural resources project log;
- b. Failure to consult with SHPO when required;
- c. Continuing accrual of report backlog or no progress in eliminating backlog;
- d. Lack of qualified staff;
- e. Failure to complete training;
- f. Failure to maintain a Section 110 management program.

2. The SD may request a review and recommendations from appropriate staff and/or the Preservation Board, as described in Section 9 of the National PA.

3. Following review, BLM, in consultation with SHPO, will develop an action plan to be followed by the subject field office in order to bring that office into compliance with this Protocol.

4. Once the subject field office believes that it has completed all of the actions specified in the plan, it will notify the DPO. The DPO, together with SHPO, will review compliance with the action plan. Based on the review, the DPO will make a recommendation to the SD to continue decertification or to recertify the field office.

5. If the field office has complied with the action plan, the SD will recertify the field office to operate under the terms of this Protocol.

6. If the field office has failed to comply with the action plan, the SD may continue the decertification and suspend a field office from operating under the terms of this Protocol.

7. The SD will notify the BLM Federal Preservation Officer and SHPO of the decertification.

8. Decertification and suspension from this Protocol requires the decertified field office to comply with Section 106 by following the implementing regulations at 36 CFR 800.

9. The SD, in consultation with SHPO, has the discretion to recertify a field office, which may then resume operating under the terms of this Protocol.

10. The SD will notify the field office and SHPO in writing when a previously decertified field office has been recertified.

XVI. DISPUTE RESOLUTION PROCEDURES, AMENDMENTS, AND TERMINATION

A. Protocol Dispute Resolution Procedures

1. If BLM or SHPO object, in writing, to an action taken by the other party to this Protocol, they will consult to resolve the objection.

2. If the dispute cannot be resolved between BLM and SHPO, the SD may ask the NCSHPO, the Preservation Board, and/or ACHP to assist in a resolution or alternative dispute resolution procedures.

3. If the parties are still unable to resolve the dispute, they will follow Protocol termination procedures identified in Section XVI (C).

B. Protocol Amendments

1. BLM or SHPO may request amendment of this Protocol at any time, in consultation with Indian tribes and other consulting parties, whereupon the parties will consult to consider the amendment.

2. Amendments will become effective upon signature of both parties, and will be attached to this Protocol.

3. Following appropriate review, new policies or procedures developed under Section VI (C) of this Protocol will be placed in Attachment E as addenda.

C. Protocol Termination

1. BLM or SHPO may terminate this Protocol by providing 90 days written notice to the other party, as long as the parties consult during this period to seek agreement on amendments or other actions that would avoid termination. Either party may request the assistance of the SD, NCSHPO, Preservation Board, and/or ACHP.

2. In the event of termination, BLM will operate under the implementing regulations at 36 CFR Part 800.

XVII. OTHER STATE-SPECIFIC PROCEDURES

A. BLM will follow procedures and will adhere to policies detailed in Instructional Memoranda, the Handbook, the Guide, and other supplemental manual and technical guidance, along with the Colorado Survey Manuals.

B. BLM and SHPO will jointly develop and revise Handbooks, the Guide and other technical guidance. BLM will provide SHPO an opportunity to review BLM policy documents as necessary.

XVIII. ATTACHMENTS

Attachments may be added to this Protocol with the mutual approval of SHPO and BLM. Referenced attachments are:

- A. Protocol Definitions
- B. Undertakings Exempt from Identification and Evaluation of Cultural Resources
- C. Sample Informational Letter
- D. Sample Concurrence Letter
- E. Other Addenda to this Protocol
- F. 1998 Protocol, including Addendum 1

BUREAU OF LAND MANAGEMENT


Ruth Welch, State Director, Colorado

10/29/14
Date

COLORADO STATE HISTORIC PRESERVATION OFFICER


Edward C. Nichols, Colorado State Historic Preservation Officer

10/16/14
Date

Attachment A: Protocol Definitions

Adverse effect: When an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register of Historic Places [NRHP] in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association [36 CFR 800.5(a)(1)].

Area of Potential Effect [APE]: The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist [36 CFR 800.16(d)].

Concurrence letter: Official BLM correspondence requesting SHPO review of, and concurrence with, BLM's determinations of eligibility, effect, and proposed resolutions. Concurrence letters must accompany all reports of non-routine undertakings.

Cultural properties/cultural resources: A definite location of human activity, occupation, or use, identifiable through field inventory, historic documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, structures, or places with important public and scientific uses, and may include definite locations (sites or places) of traditional cultural or religious importance to specified social and/or cultural groups. Cultural resources are concrete, material places and things that are located, classified, ranked, and managed through the system of identifying, protecting, and utilizing for public benefit described in the BLM 8100 Manual. They may be, but are not necessarily, eligible for listing in the National Register (BLM 8100 Manual).

Data recovery: A common mitigation measure for archaeological sites that, through implementation of a treatment plan, retrieves the important information present within an archaeological site that makes it eligible before the site's integrity is compromised or destroyed (<http://www.achp.gov/archguide>).

Federal Land Policy and Management Act of 1976 (FLPMA, (P. L. 94–579): FLPMA is a United States federal law that governs the way in which the public lands administered by the Bureau of Land Management are managed. The law was enacted in 1976 by the 94th Congress and is found in the United States Code under Title 43. The Federal Land Policy and Management Act phased out homesteading in the United States by repealing the pre-existing Homestead Acts (Wikipedia).

Formal documentation: Final versions of reports, site forms, and geospatial data submitted to SHPO.

Historic property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP. This term includes artifacts, records,

and remains that are related to and located within such properties [36 CFR 800.16(l)(1)].

Informational letter: Official BLM correspondence informing SHPO of BLM's determinations of eligibility and effect. BLM may use informational letters for routine undertakings only.

Mitigation: is a way to remedy or offset an adverse effect or a change in a historic property's qualifying characteristics in such a way as to diminish its integrity (<http://www.achp.gov/archguide>).

Need(s) data: A potential historic property that is not fully evaluated. 'Need(s) data' sites are managed as historic properties until additional documentation indicates otherwise.

No adverse effect: A determination that an undertaking's effects do not meet the criteria for an adverse effect on historic properties, or the undertaking is modified or conditions are imposed so that an adverse effect can be avoided [modified from 36 CFR 800.5 (b)].

No historic properties affected: A determination that an undertaking will have no effect on historic properties. BLM may make this determination when either no historic properties are present in the APE, or when they are present but will not be directly or indirectly affected by the activities associated with an undertaking [modified from 36 CFR 800.4(d)(1)].

Performance Management Data System: BLM's official budget system used for reporting units of accomplishment tracked as Program Element targets or work outputs.

Traditional Cultural Property: a property that derives significance from traditional values associated with it by a social and/or cultural group such as an Indian tribe or local community. A traditional cultural property may qualify for the National Register if it meets the criteria and criteria exceptions at 36 CFR 60.4 (See National Register Bulletin 38) [after BLM Manual 8100, Glossary of Terms].

Treatment: Treatment is the act of mitigating effects, or how one goes about implementing the mitigation measure(s) agreed upon in consultation (<http://www.achp.gov/archguide>).

ATTACHMENT B

UNDERTAKINGS EXEMPT FROM IDENTIFICATION AND EVALUATION OF CULTURAL RESOURCES (revised 7/5/2019)

The following BLM actions *may involve ground disturbance* but do not have the potential for adverse effects to historic properties and do not require further consideration under Section 106. In some circumstances, although an action may be listed as exempt from further consideration, the Field Manager, at the recommendation of the cultural resource specialist, may still require identification and evaluation of cultural resources.

1. Acquiring lands and easements.
2. Transferring lands or interest in lands to other Federal agencies.
3. Granting and renewing existing rights-of-way that are in compliance with the terms and conditions of the grant when there are no known historic properties within the right-of-way, no proposed upgrades and new surface disturbance, and no amendments to the grant. These grants or temporary use permits require the attachment of mandatory cultural stipulations for discovery and future surface disturbance.
4. Right-of-way re-assignments or grazing permit/lease transfers that involve only name changes.
5. Replacing and maintaining facilities that are less than 50 years old when the properties themselves are not historic, when the activities occur within existing disturbance, and when the replacement structure is similar in mass and scale.
6. Issuing special land use designations which do not authorize surface disturbance, such as Research Natural Areas, Areas of Environmental Concern and Wilderness Areas.
7. Installing and replacing signs and markers within existing disturbance where there are no known historic properties.
8. Installing cattle guards and gates within the existing road prism and/or established trail.
9. Stock or wildlife water lines laid on the surface that do not require surface disturbance and do not cross known historic properties.
10. Designating areas and routes as closed to use, including temporary and permanent closures that do not involve mechanized methods.
11. Actions limited to within stream channels, not including terraces and cut banks.
12. Personal use firewood permits outside areas known to contain aboriginal feature sites (e.g.; wickiups, fences, corrals).
13. Removing modern materials, trash dumps, and structures less than 50 years old that do not involve ground disturbance and the structures themselves are not historic properties.
14. Cadastral survey.
15. Authorizing or installing devices to protect human or animal life (e.g., raptor electrocution prevention devices) that do involve ground disturbance.
16. Herbicide application where it would be unlikely to affect historic properties.

17. Maintenance, replacement, repair, and/or minor modifications to existing fence lines that are less than 50 years old, that do not require disturbance beyond placement of posts and hand removal of vegetation, and that are not located within historic properties.

18. Fluid minerals Sundry Notice actions, as follows: alter and repair casing, APD time extension, change drilling plans after APD approval, change bottom hole, change of operator and name changes, measurement, recompletion, temporary abandonment, well spud, and workover.

19. Reclamation of fluid mineral wells that have been upgraded, replaced or removed within the last 50 years.

20. Issuance of Special Use Permits (e.g. film permits, SRPs, etc.) where no surface or resource disturbance is authorized and where there is no potential to affect cultural resources, access to, or use of cultural or natural resources by Indian tribes.

21. With annual training from a BLM archaeologist the Assessment, Inventory, and Monitoring (AIM) program will not be subject to Class III inventory for test plots that are under one cubic meter of ground disturbance per plot and are not located within a historic property.

22. Repair or stabilization of historic properties using in-kind workmanship and materials consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties and that do not have an effect upon the values that make the properties significant.

Attachment C: Sample Informational Letter



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Royal Gorge Field Office

3028 East Main Street

Cañon City, Colorado 81212



In Reply Refer To:
8100 (COF020)(MMW)

SECTION 106 INFORMATIONAL LETTER (UNDER BLM PROTOCOL)

Mr. Edward Nichols
State Historic Preservation Officer
History Colorado
1200 Broadway
Denver, CO 80202

Undertaking Name:

County:

BLM Cultural Resources Project Number:

SHPO Document Number:

NEPA Number: Report Type: (Negative or Limited Result or Full Length)

Pursuant to the Protocol Agreement between the Colorado BLM and SHPO, this undertaking does not exceed any of the review thresholds that would require SHPO concurrence, and there will be no historic properties affected. Please do not hesitate to contact us if you have any questions.

BUREAU OF LAND MANAGEMENT, ROYAL GORGE FIELD OFFICE

BY FIELD OFFICE ARCHAEOLOGIST

DATE

BY FIELD OFFICE MANAGER

DATE

Colorado Office of Archaeology and Historic Preservation
CULTURAL RESOURCE SURVEY MANAGEMENT INFORMATION FORM

Federal acres of Potential Effect/Project: Acres surveyed:

State acres of Potential Effect/Project: Acres surveyed:

Private acres of Potential Effect/Project: Acres surveyed:

TOTAL: TOTAL:

Legal Location of Project *(attach additional pages if necessary)*

Principal Meridian: Quad map name(s):

County:

Township: Range: Sec.: 1/4s:

| Site Number | Site Type | | | | Eligibility | | | | | | | Effect | | Treat-ment | | Comments | |
|-----------------------|-------------|----------|-----------------|---------|--------------|----------|-----------|--------------|------------------|------------|----------------|------------------|-------------------|----------------|-----------------|----------|---------------|
| | Prehistoric | Historic | Paleontological | Unknown | Not Eligible | Eligible | Need Data | Contributing | Non-contributing | Supporting | Non-supporting | No HPs* Affected | No Adverse Effect | Adverse Effect | No Further Work | | Data Recovery |
| SITES | | | | | | | | | | | | | | | | | |
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| ISOLATED FINDS | | | | | | | | | | | | | | | | | |
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*HPs=historic properties; †Doc.=documentation

Attachment D: Sample Concurrence Letter



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Royal Gorge Field Office

3028 East Main Street

Cañon City, Colorado 81212



In Reply Refer To:
8100 (COF020)(MMW)

SECTION 106 CONCURRENCE LETTER (UNDER BLM PROTOCOL)

Mr. Edward Nichols
State Historic Preservation Officer
History Colorado
1200 Broadway
Denver, CO 80202

Undertaking Name:

County:

BLM Cultural Resources Project Number:

SHPO Document Number:

NEPA Number:

Concurrence Category: [Select from lists in Section X (C)]

Determinations Sought: (Determinations of Eligibility and/or Effect)

Advisory Council Involvement: (Yes or No)

Mitigation Document Enclosed: (None, Draft MOA/PA or Draft Mitigation Plan)

Pursuant to the Protocol between the Colorado BLM and SHPO, we request that you review the enclosed documentation. If you concur with our determinations as described herein, please sign and return the letter to this office within ten (10) business days. If you disagree with any of our determinations, we encourage you to add your comments following the signature lines or attach additional pages as necessary. Please do not hesitate to contact us if you have any questions.

BUREAU OF LAND MANAGEMENT, ROYAL GORGE FIELD OFFICE

BY FIELD OFFICE ARCHAEOLOGIST

DATE

BY FIELD OFFICE MANAGER

DATE

The Colorado SHPO concurs with BLM's determinations.

COLORADO STATE HISTORIC PRESERVATION OFFICE

BY

DATE

COMMENTS:

Colorado Office of Archaeology and Historic Preservation
CULTURAL RESOURCE SURVEY MANAGEMENT INFORMATION FORM

Federal acres of Potential Effect/Project: Acres surveyed:

State acres of Potential Effect/Project: Acres surveyed:

Private acres of Potential Effect/Project: Acres surveyed:

TOTAL: TOTAL:

Legal Location of Project *(attach additional pages if necessary)*

Principal Meridian: Quad map name(s):

County:

Township: Range: Sec.: 1/4s:

| Site Number | Site Type | | | | Eligibility | | | | | | | Effect | | Treat-ment | | Comments | |
|-----------------------|-------------|----------|-----------------|---------|--------------|----------|-----------|--------------|------------------|------------|----------------|------------------|-------------------|----------------|-----------------|----------|---------------|
| | Prehistoric | Historic | Paleontological | Unknown | Not Eligible | Eligible | Need Data | Contributing | Non-contributing | Supporting | Non-supporting | No HPs* Affected | No Adverse Effect | Adverse Effect | No Further Work | | Data Recovery |
| SITES | | | | | | | | | | | | | | | | | |
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| ISOLATED FINDS | | | | | | | | | | | | | | | | | |
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*HPs=historic properties; †Doc.=documentation

Attachment E: Other Addenda to This Protocol

Attachment F: 1998 Protocol Addendum 1

STATE PROTOCOL AGREEMENT BETWEEN THE COLORADO STATE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT [BLM] AND THE COLORADO STATE HISTORIC PRESERVATION OFFICER [SHPO] REGARDING THE MANNER IN WHICH THE BUREAU OF LAND MANAGEMENT WILL MEET ITS RESPONSIBILITIES UNDER THE NATIONAL HISTORIC PRESERVATION ACT [NHPA] AND THE NATIONAL PROGRAMMATIC AGREEMENT [NPA] AMONG THE BLM, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION [COUNCIL], AND THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS [NCSHPO]

I. INTRODUCTION

A. This Protocol Agreement [Protocol] supplements the NPA, and describes how the Colorado SHPO and the BLM will interact. The goal of this Protocol is to improve the management of cultural resources on BLM lands in Colorado and those that might be affected by BLM's actions.

B. "Undertakings" are actions assisted, licensed, permitted, approved, funded, or authorized by BLM, as defined in the Code of Federal Regulations [36 CFR 800.2(o)]. Undertakings for which BLM is considered the lead agent, whether or not they involve federal lands, are federal actions and subject to this Protocol.

II. RELATIONSHIP OF THIS PROTOCOL WITH OTHER AGREEMENTS, LAWS AND REGULATIONS

A. This Protocol substitutes for Sections 106, 110, 111(a) and 112 (a) of the NHPA. It also replaces the 1987 Colorado "Programmatic Agreement Among U.S. Department of the Interior, Bureau of Land Management, Colorado, and Advisory Council on Historic Preservation" [CPA], which is terminated.

B. SHPO and BLM agree that:

(1) BLM conducts programs and carries out specific undertakings that involve land disturbance and modification of the built and natural environments, and;

(2) BLM is legally responsible for carrying out undertakings consistent with the NHPA and the National Environmental Policy Act [NEPA], and that;

(3) If any BLM office in Colorado fails to follow the process set forth in this Protocol, it will follow the procedures detailed in 36 CFR 800 regarding individual undertakings. Those procedures will remain in effect until a resolution is reached. Dispute resolution procedures are detailed in Section XII (A) below.

(4) The following procedures will be implemented by the BLM to fulfill its responsibilities mandated by the above-mentioned laws and regulations.

III. ADMINISTRATIVE INTERACTION AND REPORT PROCEDURES

A. Reports. All reports will be distributed to the BLM and SHPO.

(1) BLM will send cultural resource project logs (Attachment A) and NEPA logs to the SHPO at the time BLM prepares its annual report to Congress, usually in November or December.

(2) By June 30th of each year, BLM will prepare an annual summary report (Attachment B) that describes the implemented actions taken in the previous fiscal year and actions that are anticipated in the coming fiscal year. This report will include information detailed in Attachment B.

(3) By July 30th of each year, the SHPO will prepare a report that assesses the effectiveness of BLM's implementation of this Protocol and makes recommendations for actions to be taken by BLM. The BLM will consider SHPO's assessments and recommendations for future actions and will apply them to the plan for the following fiscal year, as appropriate. If SHPO is not satisfied with BLM's response, dispute resolution procedures [Section XII (A), below] may be followed.

B. Meetings.

(1) The SHPO, a BLM line manager (or the BLM Colorado State Director, if possible), BLM's Deputy Preservation Officer [DPO] for Colorado, and representatives of the BLM Colorado Cultural Resources Matrix Team will meet annually, no later than September 30, or more often as needed, to discuss pertinent issues. The Council will be invited to participate. At the August meeting, the SHPO and BLM will exchange information relevant to the goals and objectives set forth in this Protocol.

(2) Other meetings to address emerging issues and their effects on cultural resources may be arranged as necessary.

(3) Within six months after signing, BLM and SHPO will meet to review the implementation of this Protocol.

IV. SHPO INVOLVEMENT IN BLM PLANNING PROCESSES

BLM shall provide the SHPO the opportunity to participate at the development stage and all subsequent phases of land use planning in accordance with 43 CFR 1610.3 (Coordination with Other Federal Agencies, State and Local Governments, and Indian Tribes). BLM will provide the SHPO with all land management plans (e.g., Resource Management Plans, Cultural Resource Management Plans), special use plans (e.g., Fire Management Plans) and appropriate NEPA documents. Such plans will document methods to gain public input.

V. COOPERATIVE PROGRAM DEVELOPMENT AND ACTIVITIES

A. Shared Database and Information Management.

(1) SHPO and BLM will improve the exchange of information regarding the location and evaluation of cultural resources. Each agency will assure that such locational information is protected from unauthorized use.

(2) Cultural resources information exchange between BLM and SHPO will be through an automated database, managed by the SHPO. BLM will assist the SHPO in developing the system by providing financial, personnel, hardware and software resources, as funding becomes available.

(3) The SHPO will incorporate the results of BLM cultural resources inventories into the database as the results are produced, and will make the data available in order to update the statewide historic contexts.

(4) A review and analysis of the database status will be performed by BLM and SHPO annually, in time for the August meeting.

(5) The SHPO will provide the BLM with automated cultural resources information and with reasonable amounts of hard copy information not yet available in the database. Charges may be assessed by the SHPO and are subject to negotiation at the annual August meeting.

B. State-Level Historic Preservation Training.

The SHPO will be offered the opportunity to assist the BLM in on-going training of field managers and supervisors, as well as of cultural heritage specialists, for certification purposes. Training resources might include, but are not limited to: the BLM Colorado "Handbook For Cultural Resource Inventory, Evaluation and Mitigation" [Handbook], planning documents, and Colorado historic context documents. Review of training needs will occur on a yearly basis and will be conducted by the SHPO and BLM, in time for discussion at the annual meeting.

C. Public Outreach and Participation.

(1) BLM will develop and implement plans in support of public education and community outreach, along with cooperative stewardship and site protection, in consultation with SHPO. BLM will strive to develop at least one of these plans each year.

(2) BLM will seek and consider the views of the public when carrying out the actions under the terms of this Protocol. BLM may coordinate this public participation requirement with those of the NEPA and the Federal Land Policy and Management Act of 1976 [FLPMA], along with other pertinent statutes. Interested parties shall be invited to consult in the review process [Section VIII (C) below] if they have interests in the effect of a BLM undertaking on cultural resources.

(3) Interested parties may include local governments, especially those with historic preservation ordinances or resolutions (Attachment C); grantees, permittees, or owners of

affected lands or land surfaces; Indian Tribes; and other interested parties, as determined by the BLM and SHPO.

VI. NATIVE AMERICAN PARTICIPATION

BLM will comply with relevant sections of the NHPA, American Indian Religious Freedom Act [AIRFA], and the Native American Graves Protection Act [NAGPRA] if a property or project is subject to those laws. BLM will seek and consider the views of an Indian tribe that is able to demonstrate a cultural affiliation with Colorado cultural resources within project's area of potential effects (APE).

VII. IDENTIFICATION AND EVALUATION OF CULTURAL RESOURCES

A. Identification.

BLM will identify all historic properties and sacred sites on all lands within Colorado that are within the APE of a BLM undertaking. BLM will ensure that the identification of cultural resources is conducted in accordance with professional standards detailed in the Secretary of the Interior's Standards and Guidelines [Secretary's Standards] and the Handbook.

B. Determinations of Eligibility and of Effect (Evaluation).

(1) For routine undertakings, BLM will make determinations of eligibility according to criteria listed in 36 CFR Part 60.4 and determinations of effect according to 36 CFR 800.9 without consulting SHPO, except in certain instances [Section VIII (C)(2)(a), below]. When necessary, BLM will confer with SHPO if questions about eligibility and/or effect arise.

(2) During all inventories, BLM will ensure that cultural resources are evaluated in a manner consistent with the criteria cited above in Section VII (B)(1), as well as the Secretary's Standards, the Colorado historic context documents, BLM's 8100 manuals, appropriate National Register bulletins, and the Handbook.

(3) As appropriate, BLM will invite interested parties to consult.

VIII. REPORTING AND SHPO REVIEW PARAMETERS

A. Timing of Undertaking Implementation.

(1) BLM shall complete the inventory, evaluation and assessment of effects of cultural resources, along with the placement of written documentation of these findings in BLM's files, before proceeding with undertaking implementation.

(2) Most of BLM's undertakings [except those listed below in Section VIII (C)(2)(a)] are routine in nature, and will normally be permitted to proceed without SHPO review of **formal** documentation. Formal documentation is defined as final versions of reports and Colorado Office of Archaeology and Historic Preservation [OAHP] site and isolated find forms [site forms]. BLM will confer with SHPO in cases where there is any uncertainty.

B. Reporting.

(1) Quality Assurance.

(a) BLM will provide documentation in the form of complete and accurate site forms, Limited Results Survey Reports, or full-length inventory reports, as appropriate, to the SHPO, for all undertakings. BLM will ensure that Colorado State Report Guidelines [State Guidelines] and the Secretary's Standards are met in all documentation produced in-house.

(b) BLM will review the work of permitted contractors and will ensure that State Guidelines and the Secretary's Standards are met in all documentation prepared by contractors.

(c) Only qualified cultural heritage specialists will make determinations of eligibility and effect, and those individuals making determinations shall be identified in reports sent to SHPO.

(2) Timing of Documentation Submission.

(a) Formal documentation [as defined above in Section VIII A (2)] should be submitted to the SHPO's office at the time BLM gives an undertaking notice to proceed, but not later than **three months** following completion of the fieldwork. Prompt transmission of this documentation will assure an updated database and will prevent future development of backlogs. If a final report will not arrive at the SHPO's office within the three month deadline, the BLM will notify the SHPO in writing, and will include in the correspondence a plan for completion and the expected date of submission.

(b) Backlog documentation [backlog] is defined as outstanding site forms, inventory reports and treatment reports in BLM's files that predates the implementation of this Protocol. All backlog will be submitted to the SHPO within twelve months of the Protocol signature date. If the documentation will not arrive at the SHPO's office before the deadline, BLM will notify SHPO in writing, and will include in the correspondence a plan for completion and the expected date of submission. Mutually acceptable progress toward elimination of the backlog is a condition of continuing field office certification.

C. Review Processes.

(1) Routine Undertakings.

Except in the case of consultation thresholds listed below in Section VIII (C)(2)(a), an informational letter (Attachment D, informational) will accompany all final, formal BLM documentation that is sent to SHPO. If necessary, SHPO may comment, in writing, on BLM's findings. The BLM will respond, in writing, to any SHPO comments. Both parties will include such comments and responses in the annual report that assesses effectiveness of the Protocol.

(2) Exceptions.

(a) Consultation Thresholds. BLM will consult with SHPO on determinations of eligibility [except when determinations have already been made, as under (1) (b) and (2) (b) below], of effect, and of treatment; and will consult with Council on determinations of effect and of treatment.

(1) SHPO and Council Review. BLM will conduct consultation with both SHPO and Council in the following situations:

- (a) non-routine interstate and/or interagency projects or programs
- (b) undertakings affecting National Historic Landmarks or National Register eligible or listed properties of national significance
- (c) undertakings that are determined by BLM, the SHPO or the Council to be highly controversial (e.g., undertakings which have the potential to affect significant cultural resources and that receive unusual public attention and/or involve conflict)

(2) SHPO Review. BLM will conduct consultation with SHPO only, in the following situations:

- (a) land exchanges, land sales, Recreation and Public Purpose leases, and transfers
- (b) undertakings affecting National Register eligible or listed properties
- (c) when BLM professional staff lack the appropriate regional experience or professional expertise, and until performance is mutually acceptable to the BLM DPO and SHPO
- (d) when BLM's cultural heritage specialists wish to bring a particular project to the attention of SHPO

(b) Consultation Processes.

(1) SHPO Consultation Only.

- (a) BLM will submit formal documentation, as defined in Section VIII (A)(2) above, to SHPO, along with a letter requesting concurrence with its determinations of eligibility and of effect (Attachment D, concurrence).
- (b) SHPO will have ten (10) working days to respond to BLM. If SHPO agrees with BLM, BLM will allow the undertaking to proceed.

(c) If SHPO disagrees with BLM, procedures for resolving disagreements of eligibility and effect, detailed below in Section VIII (C)(4), will be followed.

(2) SHPO and Council Consultation.

- (a) BLM will submit formal documentation, as defined in Section VIII (A)(2) above, to SHPO, along with a letter requesting concurrence with its determinations of eligibility and of effect (Attachment D, concurrence).

(b) SHPO will have ten (10) working days to respond to BLM.

(c) Once BLM receives SHPO's decision, it will forward all formal documentation, along with a copy of the concurrence letter signed by both BLM and SHPO and a cover letter asking for Council review to Council.

(d) Council will have 30 working days to respond to BLM and SHPO.

(3) Treatment.

(a) If a property, group of properties, or class of properties that have been determined eligible for inclusion in the National Register of Historic Places [NRHP] will be affected by an undertaking, BLM will determine, in consultation with SHPO, whether a Memorandum of Agreement [MOA] or a Treatment Plan is appropriate, and will document this determination in the concurrence letter (Attachment D, concurrence).

(b) Treatment Plans or MOAs will take into account national policies set forth in Section 2 of NHPA, the Secretary's Standards, the Council's "Treatment of Archaeological Properties: A Handbook", and "Preparing Agreement Documents".

(c) BLM and SHPO will jointly prepare MOAs. Following submission of a first draft by BLM to SHPO, SHPO will have ten (10) working days to comment. After BLM receives SHPO's comments, it will have ten (10) working days to respond. The ten-working-day comment periods will continue in this fashion until final agreement is reached.

(d) Following the preparation of a treatment plan, BLM will submit it to SHPO. SHPO will have ten (10) working days in which to comment.

(4) Resolving Disagreements about Project Eligibility, Effect and Treatment.

(a) If, after its first ten-working-day review, SHPO disagrees with BLM on determinations of eligibility, effect or treatment, the two parties will attempt to resolve the issue(s) over the following ten (10) working days (see flow chart in Attachment E).

(b) If the Field Office manager and SHPO are unable to resolve their disagreement after the second ten-day period, they will negotiate a course of action and a timeframe for resolution.

(c) If BLM and SHPO cannot agree on a course of action and a timeframe, BLM will request the Colorado DPO, acting on behalf of the Preservation Board [Board], to attempt to resolve the issue with SHPO during a ten-working day period.

(d) If the Colorado DPO and SHPO still cannot agree, the parties will suspend operation of the national PA and protocol and will consult under provisions of 36 CFR 800.

IX. BLM REVIEWS AND SHPO MONITORING

A. BLM Review.

BLM's Deputy Preservation Officer will conduct reviews of each field office (Attachment F), at least annually, in sufficient detail, to determine:

- (1) whether qualified cultural heritage specialists are available;
- (2) whether undertakings are receiving cultural resource consideration;
- (3) whether project documentation is completed and is being sent to SHPO in a timely manner (three months unless there is an agreement with SHPO in place);
- (4) whether cultural heritage specialists are making accurate professional judgements;
- (5) whether cultural resource identification, evaluation and treatment has occurred before undertakings proceed;
- (6) whether final reports of treatment are being completed and sent to the SHPO;
- (7) whether follow-up monitoring, where required by avoidance stipulations, MOA or treatment plan specifications, is being completed.

B. SHPO Monitoring.

The SHPO may monitor BLM's activities pursuant to this Protocol through field visits and inspection of records. The BLM will cooperate with the SHPO's monitoring activities.

X. DISCOVERIES

(A) In the event that potentially eligible cultural resources are discovered during the course of ground disturbance and cannot be avoided, work in the immediate vicinity of the discovery will cease.

(B) BLM will ensure that the cultural resources are protected from further disturbance until decisions about treatment are made and treatment is completed.

(C) Within 48 hours of the discovery, BLM will evaluate the site and, in consultation with the SHPO, select the appropriate mitigation option. The BLM will implement the mitigation in a timely manner.

(D) The process will be fully documented (in reports, site forms and photographs), and the documentation will be forwarded to the SHPO. Large-scale projects will include a discovery process in the treatment plan.

XI. STAFFING

A. Professional Qualifications.

- (1) BLM will strive to meet the Secretary's Standards for Historic Preservation Professionals consistent with Office of Personnel Management guidance and Section 112

of the National Historic Preservation Act, while giving full value to on-the-job experience.

(2) If a BLM office does not have a full-time, permanent cultural heritage specialist on staff, it must have access to a cultural heritage specialist who has been certified to operate under this protocol and an approved plan that outlines how the work will be accomplished. The plan will be approved and closely monitored by the Colorado DPO. If there is no full-time, permanent cultural heritage specialist on staff and no plan, the office will be at risk of being de-certified and therefore will operate under 36 CFR 800 procedures and timeframes.

B. Certification.

(1) BLM-Colorado will ensure that expertise in prehistoric archaeology, historic archaeology, industrial archaeology, history, architectural history, historic architecture, Native American coordination, public outreach/heritage education and Traditional Cultural Properties (identification, evaluation and treatment) is available to all BLM-Colorado cultural heritage specialists.

(2) If BLM determines that it does not employ a cultural heritage specialist with a particular skill, it will obtain that expertise for the purpose of determining National Register eligibility, effects, and treatment for the cultural resources in question. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM cultural heritage specialists from other offices, or cooperative arrangements with other agencies. If a particular BLM office seeks help from another BLM office, from the SHPO, from the Anasazi Heritage Center, or from other experts, this does not imply that certification is at risk.

(3) When personnel changes occur, e.g., cultural heritage specialists or managers leave, and until positions are filled and training [as discussed below in (4)] is completed, the BLM field manager will ensure and document that qualified cultural heritage specialists are available to conduct the tasks outlined in this Protocol. If decertification is a possibility, the procedures in Section 8 of the NPA will be followed.

(4) Certification training for new field managers and cultural heritage specialists will include, at a minimum, the NPA, the Protocol, and a review of the Handbook.

(5) The qualifications of cultural heritage specialists will be reviewed by the DPO and SHPO to determine whether any on-the-job training, mentoring, or additional experience is necessary before the cultural heritage specialist is qualified to make determinations of eligibility and effect. The recommendations will be presented to the Colorado BLM State Management Team for review and approval.

(6) The BLM Board, in consultation with SHPO, will certify that each field office has a full-time, permanent cultural heritage specialist on staff:

(a) capable of carrying out the historic preservation responsibilities described in this Protocol; and

(b) trained as specified under Stipulation V B.

If the Board determines that a field office lacks such a staff person, it will document to SHPO that office's access to a qualified cultural heritage specialist who has been certified by the Board, pursuant to Stipulation XI A (2). The Board will also certify, in consultation with SHPO, that BLM has available to all of its Colorado cultural heritage staff the various kinds of expertise specified in Stipulation XI B (1). BLM shall make use of partnership opportunities with other agencies to provide expertise in such fields. In addition, BLM shall make available to its Colorado cultural heritage staff opportunities for continued professional development through classes, mentoring, and participation in state and national organizations such as the Colorado Council of Professional Archaeologists, the Society for American Archaeology, and the Register of Professional Archaeologists.

(7) SHPO will evaluate the field offices' determinations of eligibility and effect under this Protocol as described in Attachment G.

C. Para-Archaeologists.

(1) Para-archaeologists will work only under the supervision of a qualified cultural heritage specialist. The use of para-archaeologists will be at the discretion of the cultural heritage specialist.

(2) Para-archaeologists will not substitute for cultural heritage specialists when the specialists are absent, nor will para-archaeologists be considered adequate replacements for seasonal or term employees.

(3) Para-archaeologists will not conduct cultural resources inventories for undertakings with which they have direct involvement (e.g., which they have sponsored, for which they are a team leader). Exceptions are at the discretion of the cultural heritage specialist.

(4) Inventories conducted by para-archaeologists will

(a) Not exceed ten acres in a block inventory or two linear miles in a corridor survey.

(b) Not include recording of sites. Whether individual para-archaeologists will record isolated finds is at the discretion of the cultural heritage specialist.

(5) Individuals wishing to serve as para-archaeologists will apply for and be accepted as para-archaeologists at the discretion of the cultural heritage specialist.

(6) All prospective para-archaeologists are required to undergo 40 hours of classroom and field training along with 40 hours of supervised field experience.

(7) Para-archaeologists will be reviewed annually by the cultural heritage specialist to determine whether a refresher course is needed.

(8) A statement of ethics will be reviewed and signed annually by the para-archaeologist. BLM will not tolerate abuse of the para-archaeology program. Para-archaeologists that violate these guidelines or exhibit unethical behavior will be immediately de-certified and will not be reinstated.

XII. PROTOCOL DISPUTE RESOLUTION PROCEDURES, AMENDMENTS, AND TERMINATION

A. Protocol Dispute Resolution Procedures.

(1) Should the BLM or the SHPO object, in writing, within thirty (30) working days, to an action taken by the other party to this Protocol, they will consult to resolve the objection.

(2) If the dispute cannot be resolved, BLM and SHPO will mutually determine a course of action. Options might include consultation with the National Board, the Council or alternative dispute resolution procedures.

(3) If alternative arrangements are not mutually agreeable, the dispute will be referred to Council. BLM and SHPO will abide by the decision of Council.

(4) If a member of the public wishes to object to a BLM action, they will follow standard Interior Board of Land Appeals [IBLA] procedures.

B. Protocol Amendments.

The BLM or the SHPO may request amendment of this Protocol at any time, whereupon the parties will consult to consider such amendment. Amendments will become effective upon signature of both parties and will be attached to this protocol.

C. Protocol Termination.

(1) BLM or SHPO may terminate this Protocol by providing ninety (90) days written notice to the other party, as long as the parties consult during this period to seek agreement on amendments or other actions that would avoid termination. Either may request the assistance of the State Director, the Board, and/or Council.

(2) In the event of termination, the BLM will operate under the provisions of 36 CFR Part 800.

XIII. OTHER STATE-SPECIFIC PROCEDURES

BLM will follow procedures and adhere to policies detailed in the Handbook and other supplemental manual guidance, along with SHPO Cultural Resource Report Guidelines. BLM and SHPO will jointly develop and revise handbooks and other guidance as necessary

XIV. ATTACHMENTS

Attachments may be added to this Protocol with the mutual approval of the SHPO and the BLM. Referenced attachments are:

- A. Example Cultural Resource Project Log Page
- B. Outline of Topics Covered in Colorado BLM/SHPO Annual Report
- C. Entities with Historic Preservation Ordinances and Certified Local Governments, Etc.
- D. Letters
- E. Flow Chart Illustrating Process for Resolving Disagreements about Eligibility, Effect and Treatment
- F. BLM Review Form
- G. SHPO Evaluation of BLM Determinations

Addendum 1 to the Colorado Protocol: Section 106 Requirements For Comprehensive Travel and Transportation Management Planning

Background

As part of its comprehensive travel and transportation management planning program (CTTM), the Bureau of Land Management (BLM) is required to designate travel management routes and areas on public lands as open, limited, or closed to off-highway vehicle (OHV) use (as required by Executive Order 11644 ((as amended by Executive Order 11989) and regulation (43 CFR Part 8340)) and other travel use in every land use plan (LUP). CTTM planning considers both motorized and non-motorized travel, such as, OHV's, horseback riding, biking, and hiking.

Absent designation, routes and areas are subject to uncontrolled travel. Designation of routes and travel network areas generally has the beneficial effect of controlling impacts of travel on public lands, including on cultural resources. Designation provides a purposefully designed and clearly delineated travel network, reduces the potential for user caused route proliferation, and facilitates travel management and law enforcement. 43 CFR Part 8340 authorizes the closure of routes and areas to the types of OHV travel that have caused or may cause adverse effects to cultural resources. In addition, route designations prohibit indiscriminate cross-country travel that may cause adverse impacts to cultural resources.

Purpose

The closure and reduction of unmanaged cross-country travel is intended to protect cultural resources across a broad landscape. It is in the interest of cultural resource protection to complete the designation process as soon as possible. Most existing routes are user-created and have not been inventoried for cultural resources and the effects to them are not well documented. Because of the large number of existing and new routes and areas that will be designated by each planning effort, a phased identification effort is needed to complete BLM Section 106 responsibilities pursuant to 36 CFR 800.4 (b)(2). This phased identification effort is integrated into three steps of CMMT: planning, route development, and route maintenance.

This Addendum replaces two Programmatic Agreements (PA's) regarding travel management in the Royal Gorge Field Office (RGFO) and the Kremmling Field Office (KFO). The signatories of the PA for the RGFO includes the BLM, Colorado State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP) with the Comanche as a concurring party initiated on June 3, 2003. The PA for the KFO includes the BLM and the SHPO with the Southern Ute as a concurring party initiated on January 11, 2005. Both PA's will be terminated on the effective date of this Addendum following the procedures in these agreements. BLM will notify all signatories of the PA's of the termination and the implementation of this Addendum.

Development of Planning Alternatives:

Selection of specific route networks and imposition of other use limitations, will avoid impacts on cultural resources where possible. In accordance with 43 CFR 8342, existing cultural resource information must be considered when choosing among the range of alternatives for the design of a planning area travel system, including the potential impacts on cultural resources when determining whether each of the routes or areas in a planning area should be designated as open, limited, or closed. Eligible and potentially eligible (need data) cultural resource sites may be protected through rerouting, excavation of archaeological resources, limitations on vehicle type and time or season of travel, closure, and other less common mitigation strategies. Evaluation of routes or areas to be designated as closed to protect cultural resources should be based on existing inventory information and should not be postponed until additional information is acquired.

Plan Development, Maintenance and Modification

A BLM cultural resource specialist will be involved *throughout* the planning process and on any team working on periodic plan maintenance or on a plan amendment. Cultural resource inventory and monitoring information, gathered after a plan is approved, maintained, or amended, should be used to review and update the route network as necessary in any plan maintenance or plan amendment process.

Compliance with Section 106

Designation of routes and areas are considered undertakings for the purposes of Section 106 of the National Historic Preservation Act (NHPA). The signing of existing routes – does not include the construction of kiosks or other structures being used to hold information – is not considered an undertaking under NHPA. Route and area designation is considered a non-routine undertaking under the Colorado Protocol because of the magnitude and scope of this action and requires an addendum to the Protocol to address these requirements. Given the nature and potential adverse effects to historic properties from the designation of routes and areas in planning documents, Section 106 compliance for these undertakings will be accomplished as described below.

Area of Potential Effect (APE)

The APE includes a corridor that extends at least 50 feet on both sides of the centerline of the road or trail. A 300-foot use corridor will be used when parking, camping and staging areas are allowed adjacent to roads. Additional areas may be inventoried when the cultural resource specialist believes alterations in trails or roads, or changes in their use, may result in indirect impacts, such as vandalism, to cultural resources. Nickens, Tucker and Larralde (1981), *A Survey of Vandalism To Archaeological Resources in Southwestern Colorado*, provides useful information about the potential for vandalism and other indirect impacts to cultural resources from road access. This publication is accessible at http://www.blm.gov/heritage/adventures/research/StatePages/CO_pubs.html

Inventory Requirements

Three principal guidelines will be followed:

- Proposed designations that allow continued use of existing routes and keep an open area open may have adverse effects to cultural resources. When the BLM cultural resource specialist determines that existing information reveals areas where adverse effects to cultural resources have occurred, are occurring, or have a reasonable expectation of occurring from travel, some degree of Class III inventory in the APE will be required.
- Proposed designations that impose new limitations on an existing route, close an open area or travel route and keep a closed area closed are *unlikely* to adversely affect cultural resources. No further field inventory of these routes and areas is required.
- Proposed designations of new routes or areas as open to travel are subject to Section 106 compliance in the same manner as any undertaking. Class III inventory in the APE is required **prior to designation** of new routes or areas as open to travel, and for new locations proposed as camping areas, staging areas or similar areas of concentrated travel.

Phases of Identification:

- Phase 1: Planning: This phase primarily involves using existing information to identify the field inventory needs for designated routes or areas and for route closures in the APE. The plan implementation schedule will identify field inventory needs, needed funding and the schedule of completion. The plan will reference this addendum.
- Phase 2: Route development: This phase involves the Class III inventory of most designated routes scheduled for inventory in the APE.
- Phase 3: Route maintenance: This phase involves the Class III inventory of the lowest priority designated routes scheduled for inventory in the APE.

Existing cultural resource information: Every new, revised and amended LUP must incorporate sufficient information to identify the nature and importance of all cultural resources known or expected in the LUP area. Where this information is lacking or out of date, the LUP Preparation Plan should include provision for developing or revising this information as part of the overall plan development, revision, or amendment process. Cultural resource information from the planning area's Class I overview, or existing cultural resources records search and literature review, will be considered when choosing among the range of possibilities in designing a planning area travel system for proposed designation.

The records search and literature review will include the field office and the SHPO database and records, information from the most recent regional overview for the field

office, the statewide context documents, and knowledge of the cultural resource specialist.

Field Inventory: Field inventory requirements, priorities and strategies will vary depending on the nature and potential effect of the proposed travel activity and associated use levels (See Definition section) and the expected density and nature of cultural resources based on existing cultural resource information.

Federal interstate highways and State highways (primary and secondary) are not included here because Section 106 actions are the responsibility of the Federal Highway Administration, as implemented by the Colorado State Department of Transportation.

Existing routes that have been regularly maintained (Types 3A-C) do not require field inventory. [See Definitions section]

Existing routes that have not been regularly maintained (Types 4-6F) require further field inventory. [See Definitions section]

Class II inventory will be conducted on designated routes and areas in the APE that allow continued use of an existing route and keep an open area open. Class II inventory will require field visitation of known "need data" and eligible cultural resources located within or immediately adjacent to existing routes. Also, Class III inventory will be conducted on an existing route or routes in the APE that best represents the topographical/vegetation variation in the travel management area. Inventory will include the documentation of impacts from travel and the need for further Class III inventory.

Class III field inventory will be conducted in the APE for the following undertakings: (1) some designated routes and areas that allow continued use of an existing route and keep an open area open based on the results of Class II inventory, (2) all new construction of routes and the maintenance of route types 4-6F located either in the footprint or outside the footprint, such as, drainage pitch-out, culvert replacement, cattle-guard placement, facility maintenance, and restoration, and (3) route closure actions that disturb the ground both in and outside the existing route footprint. Closure actions that only impact the disturbed surface, such as hand-brushing actions, are considered to have no effect on cultural resources. Class III inventory will follow the standards identified in the Colorado Handbook of Guidelines and Procedures for Identification, Evaluation, and Mitigation of Cultural Resources – Chapter 3 (1998) attached to the Colorado Protocol.

Adverse Effects

For all adverse effects to historic properties, the cultural resource specialist will follow the evaluation, treatment, mitigation, and reporting procedures outlined in the Colorado Protocol.

Monitoring

Areas and routes that are designated open to travel in the APE will be monitored for impacts to resources, and a BLM cultural resource specialist will be included on the team

responsible for developing and implementing the monitoring standards and process. The monitoring standards and process will consider the intensity and type of travel, the density and sensitivity of cultural resources, and the potential for adverse indirect and cumulative impacts, including route proliferation. When monitoring identifies adverse effects to cultural resources from route or area designation, the decision record should make it clear which mitigation actions will be taken, and when they should be taken, in order to minimize additional environmental analysis required prior to implementation.

Monitoring will be based on the schedule identified in each plan. The BLM cultural resource specialist, as part of the monitoring team, will identify an appropriate monitoring schedule for cultural resources. The monitoring results will be reported to the SHPO in the annual report required under the Protocol. Any changes in monitoring will be identified and agreed to at the annual meeting with the SHPO on the Protocol and implemented upon an agreed time frame.

Emergencies

All travel management is subject to prohibitions against operation of vehicles on public lands in a reckless, careless, or negligent manner; and in excess of established speeds or in a manner causing or likely to cause undue damage to cultural and other resources. Where an authorized officer determines that OHVs are causing or likely to cause adverse effects to cultural resources, 43 CFR 8342 requires immediate closure to the type or types of vehicles causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence. Field inventory is not required prior to the emergency closure.

The Authorized Officer will notify the SHPO and other consulting parties by telephone within 48 hours and identify the steps being taken to address the emergency, describe the discovered cultural resource and its significance, and describe the emergency work and potential adverse effects on the discovery. Consultation will begin as soon as possible after notification to determine what mitigation measures are needed. Within 30 days following this notification, the Authorized Officer will document to the SHPO and consulting parties the actions taken to minimize effects and the work's present status. The results of mitigation will be fully documented in reports, site forms and photographs meeting the requirements in the Protocol. The documentation will be forwarded to the SHPO in accordance with the timetables established in Section X of the Protocol.

Discoveries

Discoveries may be identified during implementation and monitoring and will follow the procedures identified in Section X of the Colorado Protocol. Work in the immediate area of the discovery will cease until the discovery has been evaluated pursuant to Section VII of the Colorado Protocol. This may require the closure of the route until mitigation is completed. Within 48 hours of the discovery the SHPO and consulting parties will be notified of the discovery, and consultation will begin to determine an appropriate mitigation measure. BLM will ensure that the discovery is protected from further disturbance until mitigation is completed.

Pursuant to 43CFR10.4(g), the BLM authorized officer must be notified, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43CFR10.4 (c) and (d), activities must stop in the vicinity of the discovery and the discovery must be protected for 30 days or until notified to proceed by the authorized officer. All reasonable measures will be taken to resolve any issues regarding affiliation and disposition of discovered remains within a 30 calendar day period beginning with the agency certification of initial notification.

For Native American human remains and associated cultural items discovered on Federal land, the BLM will meet the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) for all inadvertent discoveries and discovery situations on a case-by-case basis in accordance with 43 CFR 10. For all other human remains and associated artifacts, the procedures identified in the 1989 Guidelines, Colorado Inadvertent Burial Discovery Procedures will be followed.

Consultation

Consultation with the SHPO and affected Tribes is required for all planning efforts and, as necessary, with other consulting parties. The SHPO will be consulted during planning and invited to participate in the development and implementation of identification, monitoring, and treatment options. The planning team will consult with potentially affected Tribes to solicit concerns relative to planning options and to ensure that appropriate identification and treatment options are developed and implemented during or after the planning effort. Consistent with BLM Manual 8120 and Handbook H-8120-1, additional consultation may be required for specific planning decisions and project implementation.

Funding

Route and area designation is an undertaking initiated by the planning program. The cultural resource program provides administrative support from the BLM cultural resource specialist during the planning effort. This work includes conducting the needed records and literature search and providing the input for all National Environmental Policy Act documentation. The planning program can assist with costs associated with consultation and Class I overviews.

Benefiting programs are expected to fund most cultural resource needs during development and maintenance phases to accomplish the field inventory and other needed work to satisfy BLMs requirements under Section 106 of NHPA and the Colorado Protocol. The cultural resource program can fund cultural resource work in areas and on sites that are identified in the State Strategic Plan as high priority for proactive inventory and for protection of "at-risk" cultural resources. These accomplishments are reportable under the cultural resource program elements identified in the Management Information System database.

Definitions

Route types (based on typology used by the engineering program):

[1]-[2]: Federal interstate highways, and State highways (primary and secondary).

[3A-3B]: BLM regularly maintained road (light-duty/constructed/gravel and paved).

[3C]: BLM regularly maintained road (light-duty/constructed/dirt).

[4]: BLM not-regularly-maintained road (primitive/constructed).

[5]: BLM not-regularly-maintained road (primitive/user-created).

[6A-B]: BLM motorized trail (single and double track/ATV, motorcycles).

[6C-F]: BLM non-motorized road and trail (single track/foot, horse, mountain bike).

[7]: BLM closed road

Use Levels (based on terms commonly used in travel management planning):

Decreased Use: This reduces the current use level by lowering the number and density of existing routes.

Maintain Current Use: This maintains the existing number and density of existing routes.

Increased Use: This may include a low increase (a small increase in the number of routes and density) or a high increase (a high number of routes and density).

BUREAU OF LAND MANAGEMENT



Linda M. Anañia, Deputy State Director

10/26/06

Date

COLORADO STATE HISTORIC PRESERVATION OFFICER



Georgianna Contiguglia, State Historic Preservation Officer

October 19, 2006

Date